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June 29, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Docket No. 03-15
Statement in Support of a Request to Waive the
July 1, 2006 Replication/Maximization Interference Protection Deadline
On Behalf of Siete Grande Television, Inc.
In Regard to Station WSTE(TV), Ponce, Puerto Rico

Dear Ms. Dortch:

Siete Grande Television, Inc., in accordance with the FCC's Public Notice dated June 14, 2006 (DA 06-1255), respectfully requests a waiver of the FCC's replication/maximization interference protection deadline of July 1, 2006 for WSTE in Ponce, Puerto Rico. WSTE's analog channel is Channel 7. It holds a construction permit to build DTV facilities on its currently assigned DTV Channel 8 in Ponce. Construction of the DTV facilities is currently underway. The current construction permit deadline is September 1, 2005, but due to circumstances beyond Siete Grande's control, after a lengthy local permitting process, erection of the tower was pushed back several months, requiring Siete Grande to file an FCC 337 application (filed on August 18, 2005, amended December 2, 2005 and further amended on April 20, 2006) to request a further extension until August 31, 2006. The local permits have been obtained, the tower has been erected, the antenna equipment mounted, the transmitter purchased and ready for delivery and the transmitter building is under construction. A substantial investment has been made to complete construction. The extension application is pending.

By way of background, WSTE, first experimentally and then through a permanent license, has for about 20 years provided service within its authorized analog Channel 7 primary

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service contour, which encompasses the entire island of Puerto Rico, by the use of an auxiliary transmitter in concert with three strategically placed booster stations operating simultaneously, to overcome the devastating effects of Puerto Rico's mountainous terrain. WSTE has received a tentative DTV post-transition assignment of Channel 7.

The *Second DTV Periodic Review Report and Order* mandated that TV licensees operating outside the top-100 markets, such as Siete Grande, in order to retain interference protection within their replication areas, must serve, by the July 1, 2006 deadline, at least 80% of the number of viewers served by the 1997 facility on which their replication area was based or the station will lose interference protection for areas not served. Siete Grande has the will to comply with this requirement, but due to circumstances beyond its control, finds itself unable to do so for reasons explained herein and therefore requests a waiver of the July 1, 2006 deadline requirement. Such a waiver will serve the public interest in that it will preserve post transition existing service to nearly 3 million residents who currently receive analog service on WSTE-TV. Interruption of that service can only be avoided by prompt action on this request and permitting Siete Grande to file applications to flash cut DTV service on WSTE-TV's three booster stations at the end of the DTV transition.

The Commission's *Second Periodic Review* did not address WSTE-TV's unique system of an auxiliary transmitter and three boosters. WSTE's replication area is based on the predicted Grade B contour of WSTE-TV's transmitter. As the history of WSTE shows, the actual contour produced by a single transmitter cannot alone provide service to the entire island due to intervening mountainous terrain. The choices on DTV Replication Form 381 failed to address WSTE-TV's unique characteristics. However, WSTE-TV's stated intention, set forth in the Addendum to that form, made clear Siete Grande's goal to replicate 100% of its existing analog signal.

Currently Siete Grande holds a construction permit to operate on DTV Channel 8 in Ponce. Because Channel 8 must protect Channel 9, Channel 8 is not ideal for island-wide use, which is why Siete Grande selected Channel 7 for post-transition DTV broadcasting. The DTV Channel 8 facility in Ponce, like its analog Channel 7 counterpart, the WSTE auxiliary facility in Ponce, is terrain limited to serve only the community of license and the southern portion of the island, amounting to about 630,000 residents served, or 18% of those served currently by the existing four-element analog array.

Because of the terrain limitations, full DTV replication of the 1997 analog coverage area cannot be achieved without a local engineering solution such as the continued use of the three booster sites. Therein lies the problem; the Commission has not authorized digital boosters, and absent such authorization Siete Grande will be stymied in terms of achieving DTV signal replication. Simply put, the absence of final rules that will enable Siete Grande to adopt a booster-like solution to meet its coverage needs rendered moot any possibility that the July 1, 2006 "use it or lose it" deadline could be met. Without a waiver of the July 1, 2006, use it or lose it deadline, and the concomitant protection of WSTE-TV's 1997 analog interference free

coverage area, service to 82% of the population currently receiving WSTE-TV's service would be permanently lost..¹

As stated, Siete Grande has developed a plan to ultimately establish co-channel digital booster operations at its existing analog booster sites and then to flash cut its booster stations to achieve full replication of its existing analog service. This is the most logical, workable and cost effective means for Siete Grande to achieve replication. Moreover, it has no adverse impact on any other licensee in Puerto Rico. Siete Grande has prepared and upon authorization by the Commission to do so will file applications and appropriate waiver requests to authorize WSTE to flash-cut the three booster stations, and to operate the DTV station in Ponce on Channel 7 at the end of the DTV transition. In 1997, Siete Grande embarked on what has become a nine-year quest to provide "local engineering solutions" to achieve full DTV replication of WSTE-TV's island-wide analog signal. Such replication is a principal goal of the Commission's DTV conversion program and can be achieved with an innovative DTV multi-site system that parallels the analog system that has worked so effectively for the past 20 years.

History and Description of Siete Grande's Unique Analog System

Siete Grande's multiple transmission system array is the only one of its kind in use for analog television, either in Puerto Rico or on the mainland. This four-site system, consisting of an auxiliary main transmitter in Ponce and three strategically placed co-channel booster stations, has operated without interruption for nearly 20 years to provide a single synchronized island-wide signal on its assigned analog Channel 7. Through this innovative technology, WSTE-TV has successfully overcome Puerto Rico's well-documented mountainous terrain to provide ubiquitous service that is fully within WSTE-TV's predicted signal contour--a service which could not otherwise be achieved through standard operation of a single antenna system. WSTE-TV was awarded an experimental license in 1987 to operate this island-wide transmission system. In 1992 Siete Grande succeeded in obtaining a permanent license to operate in its present fashion. More than \$25 million has been expended in developing and implementing this unique transmission facility.

¹ The Commission has pending a rulemaking proceeding that contemplates use of distributed transmission systems but has not yet adopted final rules regarding such operations. There is no certainty that final rules will be adopted and given the amount of investment necessary to establish DTV at the booster sites or at other DTS locations and the limited resources of Siete Grande, which has been documented to the Commission in other proceedings, the interim rules which the Commission has put in place do not provide an acceptable means for Siete Grande to build out its system at the present time. Given the cost factors, the slow pace of construction in Puerto Rico and Puerto Rico's cumbersome permitting processes, establishing an interim DTS System within the deadline period simply would not have been possible in any event.

In 1985, Siete Grande's predecessor licensee sought authority to construct an experimental broadcast facility utilizing widely spaced transmitters with circularly polarized antennas at low elevations in front of mountain peaks, all operating simultaneously on the same frequency. The intent of the experimental operation was to enable Station WSTE-TV to bring an independent, local service to large areas of the island previously unable to receive WSTE-TV's signal because of terrain factors. The Commission, in authorizing experimental operation concluded that the experiment would provide information useful to an evaluation of methods of overcoming terrain obstructions, and would provide a viewable signal to areas within the Station's licensed signal contour previously unable to receive the signal by direct means. The multi-transmission system was specifically developed because Puerto Rico's intervening mountains and terrain barriers precluded the signal from the Station's main transmitter from reaching, or even approaching, most of the populated areas on the island of Puerto Rico which are within the Station's authorized coverage contour. WSTE-TV believed that a system of simultaneously transmitting co-channel transmitters could provide greater service to the inhabitants within the authorized footprint of the Station's license than would be possible from a single transmission site which would provide principal community coverage to Ponce, but be shielded by mountains from most of the rest of the island. The Commission authorized WSTE-TV to construct and test on an experimental basis this unique system – a system that to this day in analog technologies has not been replicated in Puerto Rico, the mainland or elsewhere. Ponce Television Corporation, 1 FCC Rcd 1167 (1986), recon. denied 2 FCC Rcd 5878 (1987). *See also Channel 7, Inc.*, 4 FCC Rcd 5258 (1989). The same terrain obstructions that impeded island-wide signal coverage from a single transmitter in 1985 apply with equal force to DTV transmission today.

WSTE-TV constructed and tested its multi-site analog facility on an experimental basis, investing tens of millions of dollars into a process that succeeded in establishing an independent island-wide signal—one of just four commercial television stations that cover the island of Puerto Rico. Significantly, the other stations do not cover the island from one transmitter either. Instead they have obtained satellite waivers or utilize affiliated stations to achieve broader coverage. On August 20, 1992, the Commission, after an exhaustive review of thousands of measurements, granted Siete Grande a permanent license to operate the multi-site facility including Siete Grande's request for waiver of the Commission's rules to enable the booster stations to operate with higher than the maximum power permitted for booster stations. The coverage results of the experiment were impressive. *See Siete Grande Television, Inc.*, 7 FCC Rcd 5299 (1992). In granting the license to operate this integrated multi-transmission facility, the Commission pointedly observed (Siete Grande, *supra*)

“We believe that the mountainous terrain of Puerto Rico supports use of alternative methods to extend broadcast television service to as many people as possible. *See also, Channel 7, Puerto Rico*, 58 FCC 2d 1148 at 1151 (1975). The combination of the island's topography and its geographic isolation, places Puerto Rico in a highly unusual position. Its geography significantly obstructs local broadcast signals, and, because of its isolation, it does not receive any broadcast signals from off the island. Nevertheless, that isolation allows broadcasters, such

as Siete Grande, the flexibility to utilize innovative means to improve actual coverage without risking co-channel or adjacent-channel interference to others.

“Based on the evidence presented, we find that grant of Siete Grande’s applications will serve the public interest. Analysis of the data submitted by Siete Grande in conjunction with the experiment confirms that the four transmitters greatly improve actual reception of channel 7 throughout the island, allowing improved service to approximately 1.3 million people. Grant of the applications will not extend the station’s coverage beyond the area which the applicant is already licensed to serve; indeed, grant of the applications will allow Siete Grande substantially to enhance its service to those whom it is already licensed to serve. In addition, operation of the facilities will cause no interference to any co-channel or adjacent-channel station, nor will it preclude the establishment of any new facility which was not already precluded by the currently authorized channel 7 facility.”

“...the combination of the island’s topography and its geographic isolation places Puerto Rico in a highly unusual position. The island’s topography significantly obstructs local broadcast signals, and limits the ability of television stations in San Juan to provide service to portions of the island for which service would ordinarily be received. Therefore, in order for San Juan stations to reach audiences in the outer portions of the island, they must rely on some type of ownership/overlap combination or alternative engineering solution[s].”

Achieving island-wide coverage through means of the multi-site transmission facility has enabled WSTE-TV to provide emergency information and coverage in times of national disasters and hurricanes that have unleashed nature’s destructive forces upon the island. Over the years, the need for WSTE-TV’s island wide facilities has been attested to by the Governor, the Commonwealth Resident Commissioner and Member of Congress, mayors of major cities including San Juan and the community of license, Ponce, and the Civil Defense Administration as television communication remains the most important and efficient vehicle for information distribution to population areas that are cut off from other forms of mass communication.² The importance of WSTE-TV’s coverage capability is heightened further in this precarious time of homeland security, terrorism and national defense, especially since an estimated 65% of the residents of the island rely on over-the-air television reception and do not subscribe to multichannel video service providers.

² See *Request for Immediate Action*, filed by Siete Grande Television, Inc., dated February 21, 1992, on File No. BPCT-900531KE and *Reply Comments* of Siete Grande Television, Inc., dated January 24, 2003 in DA 02-3383.

WSTE-TV'S Attempts to Achieve DTV Service Area Replication

The four multi-site transmission facilities broadcast as a single system on Channel 7 even though they operate from a separate auxiliary transmitter site in Ponce and three booster locations in San Juan, Mayaguez and Arecibo. This integrated system of synchronous co-channel signals has been operating successfully as a single unitary system on a stable continuing basis since 1986, and has neither caused nor received interference from any television facility during its two-decade period of operation. The booster facilities do not expand the Station's coverage area beyond its predicted Grade B contour. Rather, the boosters enable WSTE-TV to provide service to those areas within the Grade B contour that could not otherwise receive service from a single transmitter location alone. Most significantly, although the Commission licensed three of the transmitters as boosters, which as secondary stations would not be entitled to protection, in terms of the Station's analog facilities, full service protection was afforded to Channel 7 by reason of the surrounding water and the primary status of the Station's main transmitter license across the island. In short, the distributed transmission system delivering the analog signal—even though through boosters—had de facto primary status since it was fully protected within WSTE-TV's predicted contour across the island and was therefore not subject to displacement by higher classed primary stations.

In the FCC's *Sixth Report and Order*, Siete Grande was assigned a single DTV channel allotment on Channel 66 at its main transmitter site in Ponce. Siete Grande petitioned the Commission to partially reconsider the *Sixth Report and Order* by taking into account digital service area replication in the context of WSTE-TV's unique licensed facilities including its auxiliary main and three booster stations. Siete Grande observed that obtaining and building out the experimental and permanent authorizations required a multi-million dollar investment risk. The costs included engineering and permits, construction of towers, purchase of transmitters and the construction of an intricate microwave system to connect the various boosters. Not only will the investment encouraged by the Commission be lost if DTV signal replication of the analog contour is not achieved, but from a public interest standpoint, some 2.9 million of Puerto Rico's inhabitants would lose current over-the-air reception of Channel 7.

In its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24, released February 23, 1998 ("Reconsideration Order"), the Commission recognized that "the mountainous terrain characteristics of ... Puerto Rico does provide some terrain shielding of television signals." The Commission added "...we believe that these terrain characteristics should permit broadcasters such as SGI [Siete Grande] to implement future booster stations if desired. We believe that coverage enhancements through the use of secondary low power stations are best addressed through local engineering solutions rather than as part of the DTV allotment process."³

³ *Reconsideration Order* ¶ 355.

In 1999, Siete Grande filed an application for DTV authorization, requesting a waiver to establish synchronous DTV facilities at its booster sites in order to replicate its existing analog signal and preserve its independent island-wide service.

In February, 2002, Siete Grande filed an application for a single unitary license to cover all of its multi-site facilities. Such license would have conferred primary station status upon the booster sites by looking beyond the component parts of the signal and treating the entire integrated synchronous co-channel operation as one single array. The public interest benefits of being able to perpetuate this island-wide coverage have been attested to by numerous public officials. (*See* par. 8, *supra*.) Moreover, Siete Grande submitted a detailed preclusion study which demonstrated that its digital operation on Channel 7 would not preclude any core or out of core stations from finding frequencies of their own were the Commission to permit DTV operation at Siete Grande's booster locations. The recent completion of the final round of permanent DTV channel elections confirms that fact.

On December 10, 2002, the Commission placed Siete Grande's unitary license application on a special public notice to solicit comments from interested parties as to the public interest ramifications of making such a grant. No party opposed the grant and no party in Puerto Rico commented upon the preclusion study or challenged its findings. Two parties, without opposing the merits of the Application, suggested that the Commission defer action on the proposal and instead conduct a rulemaking inquiry into the general benefits of unitary licenses. Shortly after the comment period expired, the Commission released its *Second Periodic Review*. On March 28, 2003, the Commission declined to address the issues raised by Siete Grande's unitary license application, reasoning that "These very issues are being explored by the Commission in a pending rulemaking proceeding." [and] "to do so could be seen as prejudging the rulemaking." *See Letter to Stuart Shorenstein*, dated March 28, 2003, DA 02-3383, p. 2.

Siete Grande then participated in the *Second Periodic Review DTV Rulemaking Proceeding* (MB 03-15), and the Commission, in its Order, pointed to DTS technologies as a solution for stations such as WSTE-TV to achieve DTV coverage replication. In 2005, the Commission initiated its Rulemaking Inquiry into the use of distributed transmission technologies (MB Docket No. 05-312) which contemplates the use of systems similar to the one proposed in the instant applications. That rulemaking proceeding is still pending and does not directly embrace WSTE-TV's contemplated use of DTV booster stations that mirror its current array. WSTE-TV's engineering studies show that the very same booster technology that overcame the mountainous terrain in WSTE-TV's analog service is readily adaptable to its proposed DTV operations. The proposed flash cut to DTV boosters will enable WSTE-TV to transition from island-wide analog to island-wide DTV service in an orderly and cost-efficient fashion, and achieve full replication of the 1997 analog coverage area by the time the cessation of analog TV service becomes mandatory. The herein-requested waiver of the July 1, 2006 replication deadline is supported by the public interest benefit of maintaining existing service to much of Puerto Rico's population without causing interference or preclusion. Siete Grande submits there is no other feasible or timely method that can be deployed which will achieve

replication of its present analog signal on the island of Puerto Rico and avoid a substantial loss of service by the conclusion of the DTV transition.

Given the recent adoption of legislation establishing a firm DTV transition deadline in 2009, the high cost of building out DTV facilities, and the slow pace of the construction and permitting process in Puerto Rico, the completion of the DTS rulemaking proceeding or the development of new rules for DTV boosters will come too late to avoid service loss to 2.9 million inhabitants of an existing service. Tens of millions of dollars of investment will be erased. Moreover, WSTE-TV will be limited to serving only Ponce, which could compromise its future operations since every other Ponce licensed commercial TV station other than WSTE-TV operates pursuant to a satellite waiver.

Siete Grande currently holds a construction permit for DTV Channel 8 in Ponce and is in the process of establishing temporary DTV operations on that channel which will serve the Station's community of license until island wide DTV operations can commence on Channel 7 in 2009. Siete Grande had initiated a rulemaking proceeding in 2004 to move to in core Channel 8 from out of core Channel 66 that had been originally assigned to Siete Grande and for which a construction permit was issued in 2003. Because Channel 8 must also protect Channel 9, interference limitations effectively made Channel 8 less than ideal for island-wide use. Hence, in the same week that Siete Grande was awarded Channel 8, WSTE-TV elected DTV Channel 7 as its permanent DTV channel in Puerto Rico.

The requested waiver is entirely consistent with the goals of the DTV transition. Indeed, it is unimaginable that after encouraging the use of local engineering solutions to overcome terrain obstruction, expending tens of millions of dollars to achieve an engineering marvel, and recognizing the public interest benefits that demonstrably flow from serving the entire island of Puerto Rico with a multi-site array capable of providing a unitary signal, that DTV island-wide service should now be forestalled or precluded because Siete Grande finds itself to be a square peg in a round hole. To be sure, DTV involves a different regulatory paradigm than analog, but every critical element of the DTV paradigm can be achieved by WSTE-TV in a manner that is workable and without technical harm to other licensees in order to achieve the goals of the full replication and maintenance of the Station's existing service.

Over the past decade Siete Grande has participated in one Commission proceeding after another and has been told that it must wait for yet another proceeding to be completed before it can replicate its existing service. Now that the transition deadline has been fixed and is fast approaching, a failure to waive the replication deadline will greatly jeopardize service for most of the island's inhabitants for an unknown period of time. Construction in Puerto Rico takes time and cannot be accomplished in time for the 2009 deadline unless action is timely taken so that Siete Grande can get underway with establishing its new DTV booster paradigm.

The waiver requested herein will serve the public interest by fulfilling the Commission's stated policy goals of achieving replication of the Station's 1997 analog service area and avoiding a service loss to almost three million residents of Puerto Rico, many of whom rely

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exclusively on off the air reception for television viewing. Accordingly, good cause exists for waiver of the use-or-lose deadline and the public interest would be served thereby.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stuart Shorenstein".

Stuart A. Shorenstein

cc: Shaun.Maher@fcc.gov